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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,158	04/22/2004	David Loverock	1669-40	5736
1059	7590	09/01/2005	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			EDWARDS, LAURA ESTELLE	
			ART UNIT	PAPER NUMBER
			1734	
DATE MAILED: 09/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/829,158	LOVEROCK, DAVID
Examiner	Art Unit	
Laura Edwards	1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 June 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 and 19-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-17 and 19-21 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____ ;

Withdrawal of Allowable Subject Matter

Claims 8 and 17 previously noted as being allowable have been withdrawn in view of newly found prior art to Giles.

Claim Rejections - 35 USC § 112

Claims 1-8 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5-10, Applicant claims a painting device including a conduit system structurally tied to elements recited in the preamble from the source to the valve and then have the conduit system configured such that paint in the passage downstream from the valve is prevented from flowing through the passage outlet when the valve is closed. However, it is unclear how this can result when Applicant has not positively recited all the required structure in the body of the claim. There is no source, source outlet, and no closeable valve. All such elements are recited in the preamble and are only intended to be used with the device.

With respect to claim 21, Applicants are suggested to place necessary structural elements as cited in the preamble in the body of the claim so as to enable the device to function as claimed.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graff (US 3,990,800) in view of Giles (US 6,123,478).

Graff teaches a fluid treating device comprising the combination of a wand or rod (10) for holding by an operator, a conduit system (24) on the wand for transporting coloring fluid or paint, the conduit system defining a passage having a passage inlet connectable to a source of coloring liquid or paint (not numbered) and a passage outlet (not numbered) in communication with a distributing header (22), wherein the conduit system is configured to provide fluid flow characteristics selected so that when a valve (25) in fluid communication with the conduit system is closed, paint is substantially prevented from flowing through the passage outlet; and a pad surface disposed on a roller (18) is positionable immediately downstream from the passage outlet, wherein the pad surface is configured to receive paint from the passage outlet, wherein the pad has an ice contact face or outer circumferential surface for distributing paint onto the ice surface. Graff is silent concerning the device having a conduit system configured such that when the valve is closed, paint that is in the passage downstream of the valve is prevented from flowing through the passage outlet. However, it was known in the fluid applicator art, at the time the invention was made, to provide on a pad applicator, a conduit system including an upper valve (26) and a lower downstream valve (32), the downstream valve capable of stopping the flow of fluid that is in the passage downstream from the upper valve when the upper valve is closed as evidenced by Giles (see col. 4, lines 66 to col. 5, line 1 and lines 14-30). It would have been obvious to one of ordinary skill in the art to incorporate a conduit system including upper and lower valving as taught by Giles in the Graff apparatus in order to substantially stop the flow

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of paint from the passage outlet when desired. In stopping the flow of paint via control of the upper and lower valving, the amount of paint wasted would be minimized.

With respect to claim 2, Graff is silent concerning the passage outlet of the conduit system having at least one outlet aperture of such a small cross-section so as to prevent air from flowing upstream into the conduit system. However, it is within the purview of one skilled in the art to make the passage outlet aperture of an appropriate size so as to control fluid flow therethrough. In light of the use of a coloring liquid or paint which appears to be a non-viscous material, one of ordinary skill in the art would expect to make the passage outlet aperture of a sufficiently small size to enable a desired fluid flow of the coloring liquid or paint to coat a substantial area of ice.

With respect to claims 3 and 11, it appears from Figs. 1 and 2 of Graff that that the coloring liquid or paint as supplied from the source or supply container (12) flows downward through the conduit system to the padded roller (18) via force of gravity because no pump is utilized.

With respect to claim 4, Graff recognizes that the padding on the roller is made from foamed plastic, rubber or sponge as evidenced by col. 3, lines 10-15 such that one of ordinary skill in the art would recognize the pad being of an open or porous receiving structure.

With respect to claim 5, Graff discloses that a cover is placed on the cylindrical surface of the roller as evidenced by col. 3, lines col. 3, lines 10-15 such that one of ordinary skill in the art would recognize that the pad or covering is removable from the roller and therefore from the wand.

With respect to claims 6 and 7, even though Graff recognizes the use of piping or tubing (i.e., hose) in the painting device (see col. 1, lines 60-64), Graff is silent concerning parts (i.e., the wand and conduit system) of the painting device being separable. However, it would have been obvious to one of ordinary skill in the art to make the wand or the conduit system separable since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

With respect to claims 8 and 17, while Graff shows the painting device with a single painting head or roller, Graff is silent concerning the use of a second painting head or roller connectable to the device. However, Giles recognizes the use of a second applicator head or roller of a second width connectable to the device in Fig. 3. It would have been obvious to one of ordinary skill in the art to provide a second applicator head or roller as taught by Giles connectable to the Graff device to enable a second width of coating material to be applied to the surface being treated.

With respect to claim 9, see above and container (12) includes an outlet (not numbered) in fluid communication with the conduit system, header, and padded roller (18).

With respect to claim 12, see Graff valve (25) or Giles upper valve (26) connected in fluid communication with the container outlet.

With respect to claim 21, Graff teaches a painting device as substantially claimed but is silent concerning the use of a second painting head or roller connectable to the device for painting a line of a second width. However, Giles recognizes the use of a second applicator head or roller of a second width connectable to the device in Fig. 3. It would have been obvious to one of ordinary skill in the art to provide a second applicator head or roller as taught by Giles

connectable to the Graff device to enable a second width of coating material to applied to the surface being treated.

Response to Arguments

Applicant's arguments filed 6/8/05 have been fully considered but they are deemed moot in view of the new ground(s) of rejection.

Conclusion

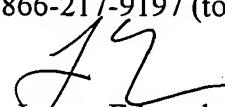
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patent teaches the state of the art with respect to dual roller painting apparatus: Tolchiner (US 2001/0047560).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-27308300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Laura Edwards
Primary Examiner
Art Unit 1734

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August 29, 2005